

learned judge was not called upon to decide there were a number of points of law to which his attention was not directed.

Mr. Joaquim for the appellant submitted that in default of the respondent showing either that the money was not due or that the requirements of the law had not been complied with, the order asked for should have been made.

Mr. Charlesworth for the respondent submitted that the notice under section 138 Land Code was premature and therefore the notice was bad. There was no default in respect of the March instalment until 7th June, 1952, and therefore the thirty days' continued default in payment of the interest required under section 138 of the Land Code had not occurred when the notice (*supra*) was given to the respondent. Mr. Joaquim contends that the notice which was headed "Notice under section 138 Land Code" should have read "section 139" and that the notice under section 139 was good. He further submitted that the words in clause 4 of the Memorandum of Charge: "immediately due and payable" are the same as "payable on demand."

If Mr. Joaquim's submission is correct, it is difficult to understand the necessity for both sections 138 and 139. He has conceded most fairly that if the notice does not come under section 139 that then he must fail in this appeal.

We have been referred to the case of *R. M. S. T. Somasundram Chetty v. Ng Sin Yan*⁽¹⁾, which was decided in 1923 when the Registration of Titles Enactment, 1911, was in force. In the Court of Appeal, the majority of the Court held that a charge drawn as payable on demand was a substantial variation from the form in the Schedule, and should have been rejected by the Registrar under his powers in section 26 as unfit for registration. Section 45 was substantially the same as section 138 Cap. 138, and only provided for two forms of charge, neither of them being applicable to a loan payable on demand.

In 1926 the present Land Code (Cap. 138) was enacted, and we find section 129 (corresponding to section 43 of the repealed Enactment) with the important difference that a form of charge XXIV(c) was added which related to a loan repayable on demand. We find also that section 139 was added, of which there is no counterpart in the 1911 Enactment. The clear intention of the legislature was to make valid a form of charge the validity of which had been doubted in *Somasundram's case*⁽¹⁾ (*supra*). Section 139 was a necessary corollary to the provision of Schedule XXIV(c) and was not intended to derogate from the

protection given to chargors by section 138 in relation to forms of charge other than the form under Schedule XXIV(c).

I find myself unable to agree with Mr. Joaquim's submission that the form of charge under Schedule XXIV(a) can be regarded as a charge to pay on demand. Schedule XXIV(c) provides the form to be used for payment on demand, and it was not used. I am satisfied that the notice (*supra*) in relation to the payment of the principal was premature and therefore ineffective under the Land Code. I would dismiss the appeal with costs and order the deposit to be paid to respondent's solicitors.

Appeal dismissed.

In re TAN AH CHUAN & ANOR.

[A. Cr. J. (Spenser Wilkinson, J.) April 28, 1954]

[Penang — Criminal Revision No. 12 of 1954]

Penal Code, s. 193 — Giving false evidence — Whether an accused person can be charged and convicted in the alternative in respect of false information given to a Customs Officer under s. 97 of the Customs Ordinance, 1952, as one alternative and false evidence in the criminal trial as the other alternative — Criminal Procedure Code, s. 176, Illustration (b) — Jurisdiction of Court — Persons charged with giving false evidence should be tried separately unless there is evidence of conspiracy — Certified copy of Notes of Evidence — Evidence Ordinance s. 76.

In this case the accused were charged on the following charge: "That you . . . on the 25th day of August, 1953 at about 4.00 p.m. at the Customs Office, Penang, in the course of an inquiry into an alleged offence stated to P. Talbot, Esq., a Customs Officer that you drove lorry No. P. 3042 direct to Changloon from Butterworth without stopping on 23rd August, 1953 . . . and at Alor Star on the 24th October, 1953 in the course of the trial *Regina v. Ch'ng Saik Kee* No. 1 of 1953, stated in evidence that you stopped to unload goods at Alor Star during the course of the aforesaid journey . . . one of which statements you knew or believed to be false or did not believe to be true and that you thereby committed an offence punishable under Section 193 of the Penal Code."

The two accused were tried jointly in the Magistrate's Court. After the evidence had been taken the question was reviewed as to whether the Magistrate's Court had jurisdiction to try the charge. The learned Magistrate after considering the matter transferred the case to a President of the Sessions Court. The case was then removed to the High Court under the powers given in section 37 of the Courts Ordinance. The most important point raised for decision in the case was whether it was permissible to charge and convict an accused person in the alternative in respect of false information given to a Customs Officer under section 197 of the Customs Ordinance, 1952, as one alternative and false evidence in a criminal trial in a Sessions Court as the other alternative.

Held: (1) information given to a Customs Officer under section 97 of the Customs Ordinance when such information is false to the knowledge of the person giving

it, whilst it is an offence contrary to section 130 of the Customs Ordinance, is not "giving false evidence" as defined under section 193 of the Penal Code; (2) unless both alternative offences came within section 193 of the Penal Code it is not permissible to include alternatives in a single charge and the only permissible procedure is to have separate alternative charges; (3) in consequence as there was no evidence in the present case to show which of the two alleged contradictory statements was false it followed that the accused could not have been convicted; (4) on the question of jurisdiction, the learned Magistrate who was himself a President of the Sessions Court could have recharged the accused before himself as President and after giving both sides an opportunity of recalling any evidence could have given his decision; (5) as the Certificate of the Registrar of the Sessions Court certifying that the copy was a true copy was not dated as required by the express provisions of section 76 of the Evidence Ordinance, the notes of evidence were not admissible in evidence; and (6) where persons are charged with giving false evidence, they should be tried separately unless there is evidence of a conspiracy between them.

Cases referred to:—

- (1) *Govindasamy v. Public Prosecutor* (1948) M.L.J. 46.
- (2) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.
- (3) *Banta Singh v. Public Prosecutor* (1941) M.L.J. 154.
- (4) *Scow Keh Meng v. Regina* (1952) M.L.J. 215.
- (5) *Supramaniam & 3 Ors. v. Public Prosecutor* (1939) M.L.J. 229.
- (6) *Soo Sing v. Public Prosecutor* (1951) 2 M.L.R. 122; (1951) M.L.J. 143.
- (7) *Tengku Abdul Aziz v. Public Prosecutor* (1951), 2 M.L.R. 196; (1951) M.L.J. 185.
- (8) *Raj Kishor Rai v. Rex* (1937) M.L.J. 171.

CRIMINAL REVISION.

J. D. Peterkin (Federal Counsel) for the Crown.
Jag-Jit Singh for both accused.

Cur. Adv. Vult.

Spenser Wilkinson, J.:—The two accused were originally charged with giving information to an officer of Customs which they knew or had reason to believe to be false, an offence punishable under section 130(1) of the Customs Ordinance, 1952. Subsequently these charges were amended to alternative charges under section 193 of the Penal Code.

The facts, which are similar in respect of each accused, are sufficiently indicated by the charges. The charge against Tan Ah Chuan was as follows:—

"That you Tan Ah Chuan alias Nai Na Hong Anu Raj on 25th day of August, 1953 at about 4.00 p.m. at the Customs Office, Penang, in the course of an inquiry into an alleged offence stated to P. Talbot, Esq., a Customs Officer that you drove lorry No. P. 3042 direct to Changloon from Butterworth without stopping on 23rd August, 1953 (the exact words of which statement are marked in red ink in the copy statement attached and marked "A") and at Alor Star on the 24th October, 1953

in the course of the trial *Regina v. Ch'ng Saik Kee* No. 1 of 1953, stated in evidence that you stopped to unload goods at Alor Star during the course of the aforesaid journey (the exact words of which evidence are marked in red ink in the copy notes of evidence attached and marked "B"), one of which statements you knew or believed to be false or did not believe to be true and that you thereby committed an offence punishable under section 193 of the Penal Code."

The two accused on the application of the Deputy Public Prosecutor were tried jointly in the Magistrate's Court at Butterworth. The whole of the evidence for the prosecution was heard, both accused were called upon for their defence and the case for the defence was duly completed. The question was then raised (presumably by the Magistrate, though this is not clear) as to whether the Magistrate's Court had jurisdiction to hear the case on the amended charges. As far as I am able to judge from the record Counsel both for the Crown and for the defence took the view that the Magistrate had jurisdiction as such. Even if this was not so, however, it was suggested that the particular Magistrate, being in fact a President of a Sessions Court who was doing a Magistrate's work for convenience, had jurisdiction to give a decision in the case without having to send it to some other President for trial *de novo*. This latter suggestion does not appear in the record, but Counsel, who appeared before me on revision, both of whom had appeared in the Court below, assured me that they had urged upon the learned Magistrate the desirability of giving a decision, if necessary, as a President, Sessions Court.

It was, to say the least, unfortunate that the learned Magistrate did not consider the question of jurisdiction when drafting the amended charges; and whilst there were no doubt technical grounds for thinking that a Magistrate's case ought not after hearing the evidence to be converted into a Sessions Court case, I do not think the technical difficulties were insurmountable, and I cannot but feel that the refusal of the learned Magistrate to continue the case as a President and give a decision inflicted some hardship to the accused. The accused had been arrested on the 25th October, 1953, there were various adjournments, and the hearing of the case was not completed until the 24th March, 1954. The result of the transfer to another President was that the next available date for hearing was the 5th May, 1954. It was for this reason that, my attention having been called to the matter, I decided to exercise my powers under section 57 of the Courts Ordinance, 1948 and remove the case into the High Court.

Various points of law and fact were argued in the Court below and before me, but the most important point which arises for decision in this case is whether it is permissible to charge and convict an accused

person in the alternative in respect of false information given to a Customs officer under section 97 of the Customs Ordinance, 1952 as one alternative and false evidence in a criminal trial in a Sessions Court as the other alternative.

In the case of *Govindasamy v. Public Prosecutor*⁽¹⁾ the Court of Appeal held that a conviction in the alternative based on a contradiction between a statement made in the course of a Police investigation and evidence given in the course of a preliminary inquiry into the same matter is legal. The reasons for this decision are to be found in the following paragraph from the judgment of the same Court in the immediately preceding case of *Ramamoorthy v. Public Prosecutor*⁽²⁾ :—

"Illustration (b) to Section 166 of the Criminal Procedure Code is merely an illustration that evidence at a trial following evidence taken at the preliminary inquiry, preceding that trial, form a 'series of acts' envisaged by that Section. There is thus a common relation between the preliminary inquiry and the trial. But there is also a common relation, possibly on a wider basis, between a preliminary inquiry and the particular police investigation immediately preceding that preliminary inquiry. Therefore a statement made during such investigation and evidence given at the preliminary inquiry form a 'series of acts' as required by Section 166 of the Criminal Procedure Code and thus can be the subject of an alternative charge if such statement and such evidence are contradictory."

It will be seen from this passage that the decision is confined to "the particular Police investigation immediately preceding that preliminary inquiry".

In *Banta Singh v. Public Prosecutor*⁽³⁾ Howes, J. held that a charge under the Minor Offences Enactment could not be tried as an alternative to a charge under section 411 of the Penal Code. The reasons for this decision, however, were that the onus of proof on the prosecution was different under the different Enactments, and I do not think that this authority is of much assistance in deciding the present case.

In a more recent case decided in Singapore (*Seow Keh Meng v. Regina*⁽⁴⁾) Brown, J. drew a distinction between cases such as *Ramamoorthy's*⁽²⁾ and the case where one of the statements was made in the course of giving false information to a public servant contrary to section 182 of the Penal Code. He says there :—

"But as there was no evidence to show which statement was false he could not have convicted in the alternative because the maximum sentences of imprisonment under Section 182 is six months and the maximum sentence of imprisonment under Section 193 is three years It seems to me that this is the distinction between *Ramamoorthy's* case, where both charges were laid under Section 193 and the accused must have been guilty of one or the other, each being the same offence and carrying the same sentence. . . ."

With the greatest respect it appears to me that the learned Judge has here overlooked that in *Ramamoorthy's*⁽²⁾ case the statement made in the course of a Police investigation if false would be punishable

under the second branch of section 193 with three years' imprisonment, whereas the statement made in the course of a preliminary inquiry if false would be punishable under the first part of the section with seven years' imprisonment—unless, indeed, a Police investigation can be called "an investigation directed by law" within the meaning of Explanation 2 to section 193. I do not think this has ever been suggested and I think the learned Judge's own statement in an earlier part of the same judgment that the maximum penalty in cases like *Ramamoorthy's*⁽²⁾ and *Govindasamy's*⁽¹⁾ would be three years and a fine shows that he did not take this view.

I think there are other grounds of distinction to be found between cases such as *Ramamoorthy's*⁽²⁾ and cases where the alternative is giving false information on the one hand and false evidence on the other. I doubt if there is the same kind of connection between information supplied to a Customs officer under section 97 of the Customs Ordinance and a prosecution commenced at a later stage, as there is between a Police investigation and a preliminary inquiry. A Police investigation under the provisions of the Criminal Procedure Code must of necessity be in investigation directed to a particular offence. The provisions of sections 118, 120 and 121 of the Criminal Procedure Code indicate that no powers of investigation arise at all until there is at least information or reasonable suspicion that some offence has been committed. Section 122 provides that a Police officer making an investigation may require the attendance before him of any person who "appears to be acquainted with the circumstances of the case"; and section 123 provides that he may examine orally any person "supposed to be acquainted with the facts and circumstances of the case". It is clear, therefore, that a Police investigation is an investigation into the circumstances of an offence or of a case and when it is completed and a preliminary inquiry or trial takes place that trial or inquiry is directed to the same offence or case.

Section 97 of the Customs Ordinance, however, is a very different kind of provision from the provisions contained in Chapter XIII of the Criminal Procedure Code. It reads as follows :—

"97. Every person required by the proper officer of Customs to give information on any subject into which it is such officer's duty to enquire under this Ordinance and which it is in such person's power to give shall be legally bound to give such information."

No doubt in many cases the subject into which it is the Customs officer's duty to enquire are possible Customs offences, but the commission of an offence or even the suspicion that an offence has been committed is clearly not a condition precedent to the exercise of

the Customs officer's powers under this section. The information he seeks may be entirely unconnected with any particular offence or suspected offence.

Whilst, therefore, I find it difficult to adopt the whole of his reasons, I am in agreement with Brown, J. in drawing a distinction between the present case (which as I see it is very similar to the one before him, because section 182 of the Penal Code like section 97 of the Customs Ordinance deals with false information) and *Ramamoorthy's*⁽²⁾ case. I think, therefore, that the case before me is not governed by *Ramamoorthy's*⁽²⁾ case and that whilst giving false information followed by giving false evidence may sometimes be a series of acts within the meaning of section 176 of the Criminal Procedure Code this will depend on the circumstances of each case. In the present case whilst in opening the prosecution case in the Court below the Deputy Public Prosecutor indicated a close connection between the two acts of each of the two accused I do not think sufficient evidence was actually adduced to show that the giving of the information followed by the giving of evidence were sufficiently connected to form a series of acts within the meaning of the section.

Apart from the authorities the statute law on the subject of alternative charges and convictions thereon is somewhat complicated. It appears to depend partly on the provisions of section 176 of the Criminal Procedure Code; partly upon Illustration (b) to that section; partly upon the form of alternative charge laid down in the Schedule of the Criminal Procedure Code and made obligatory by the provisions of section 181; partly upon the provisions of section 270 of the Criminal Procedure Code; and partly upon section 72 of the Penal Code. (For convenience I would here mention that the equivalent provisions of the F.M.S. Criminal Procedure Code which are sections 166, 276 and 172 are practically word for word the same as those in the Straits Code).

Approaching the problem from the point of view of the relevant sections of the Codes it appears to me in the first place that there is a clear and important distinction between the power to charge in the alternative and the power to convict in the alternative, and that the substantive provisions of section 176 of the Criminal Procedure Code deal solely with the question of joinder of charges. The power to convict in the alternative is given by section 270; and the result, as far as the punishment is concerned, is laid down in section 72 of the Penal Code. Section 176 as originally drawn says nothing whatever about convicting in the alternative and upon the ordinary meaning of its words without the illustrations I would have had no hesitation

in concluding that it means no more than it says — that in the circumstances laid down a person can be charged in the alternative. In the ordinary way where a person is charged with alternative charges he is convicted upon one of the alternatives and thereby automatically acquitted on the other. Illustration (b) to section 176, however, states by way of illustration that "they may be charged in the alternative and convicted. . . .". This illustration, which was added by way of amendment in 1933, can, it seems to me, be read either as a deliberate amendment, by way of illustration, of the words of the substantive section or as an illustration of the combined effect of sections 176 and 270. Of these two possible readings I prefer the latter, because the form of alternative charge under section 193 laid down in the Schedule to the Criminal Procedure Codes was already in existence before Illustration (b) was added.

The form of alternative charge laid down in the Schedule taken together with Illustration (b) to section 176 and the Explanations to section 193 of the Penal Code seems to indicate that the Legislature intended to treat offences under section 193 in an exceptional manner. No other form of alternative charge is anywhere laid down in the Criminal Procedure Code and normally it is not permissible to include alternatives in a single charge. The usual method is to charge the accused with an offence under some provision of the law and then in a separate alternative charge to charge him with an offence against some other provision of the law. It appears to me that, except where both alternative offences come within section 193, the only permissible procedure is to have separate alternative charges.

Having charged an accused person with alternative charges then the only provision which I can find which entitles a Court to give a judgment in the alternative rather than to convict on one or other of the alternatives is section 270 of the Criminal Procedure Code, which reads as follows:—

"270. When the conviction is under the Penal Code and it is doubtful under which of two sections or under which of two parts of the same section of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative."

This section refers and refers only to convictions under the Penal Code and this limitation appears to me to be reinforced by the provisions of section 72 of the Penal Code for in the latter section the words "these offences" refer only to offences under the Penal Code (see section 40 of the Penal Code). I observe that in the case of *Supramaniam & Ors. v. Public Prosecutor*⁽³⁾ the learned Judge said:—

"Mr. Das during the hearing raised the point that persons could not be charged in the alternative with

offences under the Penal Code and with offences under other Enactments. This objection is based on Indian views as to the meaning of the Indian equivalent of Section 166 of the Criminal Procedure Code. I am unable to follow the reasoning on which such a limitation is based."

It is not clear from the report whether the attention of the Court was directed to the provisions of section 270 of the Criminal Procedure Code and to section 72 of the Penal Code; but in view of the provisions of those sections I am of opinion that even though a person can be *charged* with such alternatives he cannot be *convicted* in the alternative unless both offences are offences under the Penal Code.

This brings me to the particular offences charged in the case now before me. I do not think the first alternative falls within the Penal Code at all. Giving false evidence is defined by section 191 of the Penal Code, which reads as follows:—

"191. Whoever being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence."

It is clear that a person giving information under section 97 of the Customs Ordinance is not legally bound by an oath. Therefore in order to bring any information given within the definition in section 191 there must be either an express provision of law to state the truth or the person giving information must be bound by law to make a declaration upon some subject.

The learned Deputy Public Prosecutor argued in the Court below and submitted before me that unless section 97 is read as meaning that the information to be given must be true the results would be absurd. I agree that in view of the provisions of section 130 of the Customs Ordinance which makes it an offence to give false information there can be no doubt that the information to be given under section 97 must be true. Whilst this appears to me to be a necessary implication from the wording of the sections I can find no *express* provision in section 97 to state the truth.

Can it then be said that by virtue of the provisions of sections 97 and 130 a person asked to give information under section 97 is bound by law to make a declaration upon some subject? In my opinion it would be unduly stretching the meaning of words to hold that a person giving information is making a declaration.

My conclusion, therefore, is that information given to a Customs officer under section 97 of the Customs Ordinance when such information is false to the knowledge of the person giving it, whilst it is an offence contrary to section 130 of the Customs Ordinance, is not "giving false evidence" as defined

and is therefore not an offence under section 193 of the Penal Code.

The charges as framed in the present case thus give rise to two difficulties. In the first place the alternative form of charge laid down in the Schedule for alternative offences under section 193 does not apply, so that the accused should have been charged first with giving false information under section 130 of the Customs Ordinance and by an alternative charge with giving false evidence in a Court under section 193 of the Penal Code. If, however, the accused had been tried upon two alternative charges thus framed then it appears to me that there was no power in the Court to convict him in the alternative and the prosecution would have had to prove which of the two offences had been committed, so as to convict upon one or other of the alternative. As there was no evidence in the present case to show which of the two alleged contradictory statements was false it follows that the accused could not have been convicted.

On the question of jurisdiction, accepting as he did the charge as framed before him I think the learned Magistrate was wrong in deciding that he had no jurisdiction as Magistrate. I have expressed the view that this charge was not in order and if alternative charges had been framed under section 193 of the Penal Code and section 97 of the Customs Ordinance then upon conviction on one of these charges the accused might have been liable to seven years' imprisonment. On this view, therefore, the Magistrate had no jurisdiction. But even assuming that the case was outside the Magistrate's jurisdiction I am of opinion that as the particular Magistrate was at the time a President of a Sessions Court in Penang he could have re-charged the accused before himself as President and after giving both sides an opportunity of recalling any evidence could have given a decision. I am of opinion, therefore, that I am in a position to make such order as on the view of the law I have indicated should have been made by the Court below.

The learned Deputy Public Prosecutor intimated that in his view the questions of law which arise in this case, particularly the question of alternative charges, are questions which it is desirable in the public interest to have determined by the Court of Appeal and as I agree with this view I think it advisable to indicate shortly my views on the other points which arose because if I give the appropriate certificate the revision will have to be re-heard by the Court of Appeal.

Mr. Jag-Jit Singh on behalf of the accused raised the point both in the Court below and before me that the notes of evidence put in before the learned

Magistrate were inadmissible. In the Court below he relied on section 80 of the Evidence Ordinance but before me he based the objection on the fact that the certificate by the Registrar of the Sessions Court certifying that the copy was a true copy was not dated as required by the express provisions of section 76 of the Evidence Ordinance.

Against this, the learned Deputy Public Prosecutor argued that as the copy put in had actually attached to it an official memorandum signed by the Registrar and dated the 1st November, 1953 the date on the memorandum could be taken to be the date of the certification.

It is true that both accused gave evidence to the effect that they had made the statements alleged but it has been held that where in the Court below there is not sufficient evidence upon which to call upon the accused for his defence then any evidence given by the accused after having thus wrongly been called on for his defence cannot be taken into consideration on appeal (*Soo Sing v. Public Prosecutor*⁽⁶⁾, *Tengku Abdul Aziz v. Public Prosecutor*⁽⁷⁾). If, therefore, the notes of evidence were not properly proved then the foundation of the prosecution case which was based upon contradictions was knocked away. I think the words of section 76 of the Evidence Ordinance are too clear to admit of any gloss upon them. The section says "such certificate shall be dated and subscribed by such officer with his name and official title ...". The requirement that the certificate shall be dated has as much force as the requirement that it shall be subscribed. If, therefore, the certificate is not dated then the copy is not a certified copy. In my opinion the fact that this copy was forwarded to the Officer, Preventive Branch, Penang under cover of an official memorandum dated the 1st November, 1953 is no evidence that the certificate was made on that date and the date on the memorandum is no substitute for the lack of date on the certificate. On this ground also, therefore, I think the accused were entitled to be acquitted.

On the facts of the case I would make one comment. Both accused in giving evidence explained that when they had said to the Customs officer: "I did not stop on the way to Changloon" they meant that they did not spend the night anywhere on the way. I think perhaps it is unfortunate that the respective interpreters who dealt with the statements made by each of the accused to the Customs officer were not asked more precisely what words were used in Chinese which were translated as "I did not stop on the way to Changloon". I gave consideration to the question

of whether it would be advisable for me to call further evidence on this point but I came to the conclusion that it would be almost impossible for the interpreters concerned at the present time to remember the details of a conversation of this kind which took place in August of last year. Moreover, both accused were represented by Counsel and in view of the defence put forward by the accused the interpreters should in my opinion have been cross-examined on this point. If there was any possibility of misunderstanding on the question of the meaning of the phrase "stop on the way" this could easily have been cleared up by cross-examination and should in my opinion have been put to these two witnesses and to the Customs officer.

Whether the explanations given by the accused in their evidence were such as to raise a reasonable doubt as to their intention on the lines indicated in the case of *Raj Kishor Rai v. Rex*⁽⁸⁾ it is not necessary for me to decide.

Finally, I think I ought to express my doubt as to whether it was permissible for the two accused in this case to be tried jointly, although this point was not argued before me. Section 239 of the Indian Criminal Procedure Code differs in some respects from section 179 of the Straits Code, but it is substantially similar and according to the Indian authorities on that section it is not proper to try together persons accused of perjury unless there is evidence of a conspiracy between them. I am inclined to agree with the comment in *Sohoni's Criminal Procedure*, 14th edition page 512 that "a lie by a witness is none the less his own particular lie and it is his own and not another's lie that can alone be used against him or be the subject of a prosecution on that account". Whilst the relevant journey of the lorry from Butterworth to Changloon was one transaction in which both accused were concerned the information given by each accused to the Customs officer was given on separate and distinct occasions through different interpreters and I cannot see that this can be said to be the same transaction. With regard to the evidence given in the Sessions Court the examination of each witness in a trial is again in my opinion a separate transaction. I am inclined to think, therefore, that in this case the accused should have been tried separately.

For all the above reasons I hold that the two accused ought to have been acquitted upon the charges preferred against them and as I do not think it a proper case for a re-trial I make an order of acquittal accordingly.

Accused acquitted.

Solicitor for both accused: *Jag-Jit Singh.*